

AXEL BURMEISTER ET AL.
USSN 09/636,781

ADDITIONAL FEE

Please charge any insufficiency of fees, or credit any excess, to Deposit Account No. 14-1263.

REMARKS

Applicants expressly reserve the right to prosecute the non-elected subject matter in a divisional application, if necessary.

Applicants respectfully request that the Examiner reconsider and withdraw the restriction requirement. Although the Examiner indicates that Groups II and III are separately classified, the fact remains that if Group I is found to be novel and unobvious, then Groups II and III must also be novel and unobvious—by definition. *See, for example, In re Ochiai*, 37 USPQ2d 1127 (Fed. Cir. 1995); and *In re Brouwer*, 37 USPQ2d 1663 (Fed. Cir. 1996). Consequently, all of Groups I-III should be examined together or at least Groups II and III should be rejoined in the event that Group I is found to be novel and unobvious.

In the event that the Examiner disagrees on this point, Applicants would call the Examiner's attention to the Commissioner's Notice published in the Official Gazette on March 26, 1996, at 1184 OG 86. According to that notice:

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“[A]pplicant may be called upon under 35 U.S.C. § 121 to elect claims to either the product or the process. The claims to the non-elected invention will be withdrawn from further consideration. However, in the case of an elected product claim, rejoinder will be permitted when a product claim is found allowable and the withdrawn process claim depends from and otherwise includes all the limitations of an allowed product claim.”

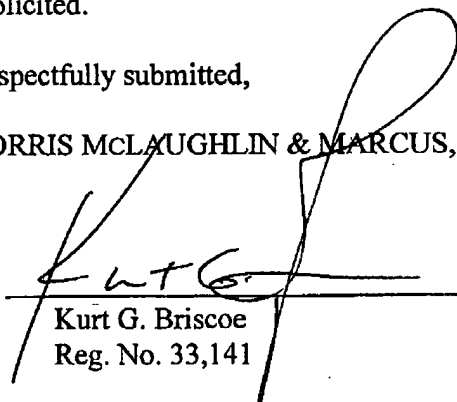
Applicants presume that the Examiner is proceeding in accordance with this notice, and that at least Group III will be rejoined and examined in the event that Group I is found to be allowable. If not, then Applicants would appreciate an explanation from the Examiner of why this notice is not applicable. Applicants submit that this logic under the present circumstances applies with equal force to Group II, and that Group II should also be rejoined and examined in the event that Group I is found to be allowable.

Early and favorable action is earnestly solicited.

Respectfully submitted,

NORRIS McLAUGHLIN & MARCUS, P.A.

By


Kurt G. Briscoe
Reg. No. 33,141

220 East 42nd Street
30th Floor
New York, New York 10017
(212) 808-0700

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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that the foregoing Response to Restriction Requirement and the accompanying Petition for Extension of Time (6 pages total) are being facsimile transmitted to the United States Patent and Trademark Office on the date indicated below:

Date: May 23, 2002

By


Kurt G. Briscoe